



MAYOR AND COUNCIL AGENDA

NO. 14 DEPT.: Legal/ Community Planning and Development Services DATE: July 21, 2004

Contact: Deane Mellander, Planner III/Bob Spalding, Chief of Planning

ACTION: Discussion and Instruction to staff on proposed zoning text amendment TXT2004-00212: to amend the Zoning Ordinance to revise the procedures for review and approval of the optional method of development, Mayor and Council, applicant.

ACTION STATUS:

FOR THE MEETING OF: 7/26/04

INTRODUCED

PUB. HEARING 7/19/04

INSTRUCTIONS

APPROVED

EFFECTIVE

ROCKVILLE CITY CODE,

CHAPTER 25

SECTION 193

☐ CONSENT AGENDA

RECOMMENDATION: Discuss and instruct staff on proposed zoning text amendment TXT2004-00212.

IMPACT: ☐ Environmental ☐ Fiscal ☒ Neighborhood ☐ Other:

Revises the optional method procedures for approval of Preliminary Development Plans (PDP's) and Use Permits. Requires the Mayor and Council to approve PDP's in all instances.

BACKGROUND: There are several different optional method procedures set forth in the zoning ordinance and they are processed in different ways. Developments in the O-1 office zone and in the Rockville Pike Corridor, optional method applications are approved through the use permit process by the Planning Commission. In the I-3 Zone, the optional method is available through approval of a Preliminary Development Plan (PDP) by the Mayor and Council with recommendation from the Planning Commission. In the case of projects in the Town Center Performance District, optional method applications are considered through approval of a PDP and Use Permits by the Planning Commission, unless the site is on land owned by the City or City-owned land that has been sold to the applicant. In that case, the Planning Commission approves the PDP but the Mayor and Council approves the use permits with a recommendation from the Planning Commission. The Planning Commission or the Chief of Planning are responsible for administering use permits for other projects.

The proposed text amendment is intended to revise these various optional method procedures into a consistent pattern for ease and clarity of administration. In addition, by having the Mayor and Council act on the PDP, they will be making the initial policy consideration as to whether the application is consistent with master plan and other City policies. The Planning Commission acts in

an advisory capacity with regard to the initial PDP consideration, and will administer the details of the development proposal through the use permit process. This will be more consistent with the comprehensive planned development process (CPD) process.

The Planning Commission recommended approval of this proposal at its meeting on July 14, 2004. The Mayor and Council held a Public Hearing on July 19. Staff noted that the Planning Commission recommended that the amendment include explicit requirements to have the preliminary development plans reviewed by the Planning Commission prior to action by the Mayor and Council. The Planning Commission also noted that a joint worksession with the Mayor and Council, Planning Commission and the applicant very early in the process is very helpful. Staff has included additional language in the text amendment to implement both recommendations, shown in double underlined text in Attachment 1.

The Mayor and Council received testimony from Erica Leatham (Rockville Chamber of Commerce), Lih Young, Bridget Newton (West End Civic Association) and Harry Thomas (Twinbrook Civic Association). Erica Leatham and Bridget Newton both supported the need for more objective standards to achieve optional method of development height and density. The Mayor and Council noted that additional standards would be discussed during the July 21 Mayor and Council and Planning Commission joint worksession. Erica Leatham recommended that optional method of development approvals remain with the Planning Commission, while Harry Thomas supported it being transferred to the Mayor and Council. Bridget Newton indicated that she could support either method.

The Public Hearing record will close at 5 p.m. on Monday, July 26. If additional testimony is received, it will be provided to the Mayor and Council at the meeting. The following summarizes the changes proposed by the text amendment.

The following is a summary of the proposed changes to each of the Articles to be amended:

1. Article V, "PERMITS"

Sec. 25-191: Revise staff terminology

Sec. 25-192: Revise to delete references to Mayor and Council approving use permits for land owned by the City or purchased by the applicant from the City. Also revise staff terminology.

Sec. 25-193: Revise staff terminology. Delete references to approval by Mayor and Council.

2. Article VII, "ZONING DISTRICT REGULATIONS"

Sec. 25-326: Requires submittal of a Preliminary Development Plan (PDP) rather than a use permit application.

Sec. 25-327: Revised to require submittal of a PDP for consideration by the Mayor and Council. The procedure is the same as is currently required in the I-3 Zone optional method.

3. Article XII, "SPECIAL DEVELOPMENT PROCEDURES"

Sec. 25-667: Add clarifying terminology for Mayor and Council; add successor to the Standard Traffic Methodology.

Sec. 25-669: Add clarifying terminology for Mayor and Council.

Sec. 25-670: Add clarifying terminology for Mayor and Council.

4. Article XIII, "TOWN CENTER PLANNING AREA"

Sec. 25-682 (a): subsection (a) renumbered. *(new)*

Sec. 25-682 (b): adds referral to Planning Commission. *(new)*

Sec. 25-682: Revise to change "Planning Commission" to "Mayor and Council" as the approving body; add successor to the Standard Traffic Methodology.

Sec. 25-683: Revise to change "Planning Commission" to "Mayor and Council" as the approving body.

Sec. 25-693: Separate approvals between Mayor and Council and Planning Commission for PDP actions vs. use permit actions.

5. Article XIV, "ROCKVILLE PIKE CORRIDOR AREA"

Sec. 25-710.27: Requires submission of a PDP for approval by the Mayor and Council vs. approval of use permit by the Planning Commission; reduces the number of trips generated that requires a traffic impact study from 100 to 30, as per the pending "Comprehensive Transportation Review" process; adds successor to the Standard Traffic Methodology.

Sec. 25-710.30. Adds this new section requiring approval of a PDP by the Mayor and Council.

Sec. 25-710.30 (e) adds referral to Planning Commission. *(new)*

Sec. 25-710.31. Adds a provision that requires the use permit to be consistent with the approved PDP.

Sec. 25-710.32: This section deleted since it is replaced by the new language in new Sec. 25-710.30 (b).


Post card notice and a draft of the proposed text were mailed to all the civic associations and the business community.

PREPARED BY:


Robert J. Spalding, AICP, Chief of Planning

7.21.04
Date

APPROVE:


Arthur D. Chambers, AICP, CPDS Director

7/21/04
Date

APPROVE:


Catherine Tuck Parrish, Asst. City Manager

7/21/04
Date

LIST OF ATTACHMENTS:

1. Proposed text amendment.
2. Chamber of Commerce Testimony.

TEXT AMENDMENT TXT2004-00212: TO REQUIRE MAYOR AND COUNCIL TO APPROVE OPTIONAL METHOD OF DEVELOPMENT APPLICATIONS – JULY 21, 2004

1. Amend Article V, “PERMITS”, DIVISION 2, as follows:

DIVISION 2. USE PERMIT

Sec. 25-191. Required.

- (a) No building, other structure or land shall be used, nor shall any building be constructed, or building converted, wholly or in part, to any other use, nor shall any structural changes in a building be made until the plans and specifications for such use are approved by the issuance of a use permit as provided herein. A use permit shall not be required for single-family or semi-detached residential structures and related accessory uses, or for uses allowed by temporary permit issued by the [Superintendent of the Division of Licenses and] Chief of Inspection Services. No building permit shall be issued until a use permit, if required, has been issued.

Sec. 25-192. Application.

- (a) Use permit applications shall be submitted to the Planning Commission for the following uses [, unless the use is on land owned by the City or purchased by the applicant from the City in the Town Center Performance District]:
 - (1) Multiple-family dwellings;
 - (2) Townhouses;
 - (3) Publicly owned or operated buildings and uses;
 - (4) Multiple-use buildings or more than twenty-five thousand (25,000) square feet of gross floor area;
 - (5) Uses on land zoned inconsistent with the adopted master plan;
 - (6) Uses on land abutting recommended permanent zone boundaries with residential uses;
 - (7) Uses on land within the Town Center Planning Area;
 - (8) Uses on land within the Rockville Pike Corridor Area.
- [(b) Use permit applications for uses on land owned by the City or purchases by the applicant from the City in the Town Center Performance District shall be submitted to the Mayor and Council.]
- (b) All other use permit applications shall be submitted to the [Director] Chief of Planning unless otherwise directed by the Planning Commission.
- (c) Each application shall be submitted on forms provided therefore by the Planning Commission and be accompanied by such fee as is determined by resolution of the Council. The applicant shall furnish as part of the application such information as may reasonably be required by the Planning Commission [or the Mayor and Council].

Sec. 25-193. Issuance; term, etc.

- (a) A use permit shall be issued if the Planning Commission[, the Mayor and Council,] or the [Director] Chief of Planning, as the case may be, finds that the use proposed in the application will not:
 - (1) Affect adversely the health or safety of persons residing or working in the neighborhood of the proposed use;
 - (2) Be detrimental to the public welfare or injurious to property or improvements in the neighborhood; or
 - (3) Constitute a violation of any provision of this Code or other applicable law.
- (b) The Planning Commission[the Mayor and Council,]or the [Director] Chief of Planning may attach such conditions to the approval of the use permit as may be reasonable and necessary to assure that the proposed use will be consistent with the purpose and intent of this chapter. Such conditions of approval may include, but not be limited to, a requirement that plans and programs for soil erosion and sediment control, as [may be recommended by the Soil Conservation Service] set forth in Chapter 19 of this Code, be carried out in conjunction with the use and development of any land for which a use permit is issued, and a limitation on the time for implementing all phases of a multiple building development use permit. Notwithstanding the provision of subsection (d) hereof, the limitation for commencement for all phases of development for multiple building development use permit, shall not exceed eight (8) years.
- (c) No deviation from the plans so approved shall be permitted without approval as provided in this subsection:
 - (1) No substantial deviation from plans approved shall be permitted without the approval of a new use permit following the same procedure as in the case of an original application;
 - (2) Any deviation not deemed substantial by the [Director] Chief of Planning may be considered and acted upon by the [Director] Chief of Planning following submission of an application to amend the use permit for insubstantial deviations;
- (d) Construction or operation shall commence within two (2) years of the date of issuance or the use permit shall become void. For good cause shown, not more than two extensions not exceeding one (1) year each, may be granted by the Planning Commission[, the Mayor and Council,] or the Chief of Planning, depending on who has authority over the application.
- (e) Whenever the Planning Commission[, the Mayor and Council,] or the [Director] Chief of Planning find that any permit [previously approved has not been complied with, the Planning Commission[, the Mayor and Council,]or the [Director] Chief of Planning are authorized after written notice by first class mail to the applicant and any persons who appeared before the Commission[, or Mayor and Council] or entered their appearance in writing prior to the approval of the use permit, and after granting the applicant an

opportunity to be heard, suspend or revoke or take such other action as deemed necessary.

2. Amend Article VII, "ZONING DISTRICT REGULATIONS", DIVISION 3, as follows:

DIVISION 3. DEVELOPMENT STANDARDS

* * *

Sec. 25-326. Special development standards for multifamily dwellings in the O-1 Zone.

* * *

- (b) *Optional method of development.* Use of the optional method of development is a voluntary option for any parcel of land in the O-1 Zone. Submission of a [use permit] preliminary development plan under the optional method commits the applicant to a greater degree of development review authority by the Mayor and Council and the Planning Commission. Developments submitted for approval under the optional method of development shall be subject to the following additional modifications and requirements:

* * *

- (c) *Optional method approval.* [The Planning Commission may authorize the optional method of development only if it determines that the proposed development is in substantial accordance with the Plan and with the intent and purpose of this article, does not generate any unsatisfactory traffic impact, and is compatible with adjacent existing and permitted uses and developments. In making such determination, the Commission shall consider:
 - (1) Provisions made for traffic impact mitigation, open space and other amenities; and
 - (2) The particular dimensions, grade and orientation of the site, and the locations and height of existing and proposed development in the neighborhood.

All requests for optional method approval shall be submitted for concurrent consideration with the use permit application and shall be accompanied by the material and information the Planning Commission requires to make a decision. The fact that an application complies with all of the specific requirements and purposes of the applicable zone or this article shall not be deemed to create a presumption that the development shall be approved.]

A Preliminary Development Plan application for the O-1 Optional Method of Development for the entire development area shall be submitted on forms which shall be approved by resolution of the Mayor and Council and shall be accompanied by such fee as is determined by resolution of the Mayor and Council. All information specified on such forms shall be supplied and the form shall be subscribed by the application and the applicant shall be bound by all information specified thereon. In addition to information required on the application form, all applications must contain the following:

- (1) A traffic impact study in conformance with the City's "Standard Traffic Methodology," or its successor or such other form of traffic analysis acceptable to the City which shall provide mitigation of traffic impacts acceptable to the Mayor and Council;
- (2) A draft declaration to be executed by all property owners which sets forth the rights, responsibilities, and duties of each property owner with respect to the amenities, open space, dedications and any other obligations required under the Preliminary Development Plan for multiple building projects. The draft declaration shall include a proposed phasing schedule which corresponds each stage of development with the implementation of the rights, responsibilities and duties set forth in the Preliminary Development Plan application. The draft phasing schedule shall include, to the extent relevant, information regarding the provision of the following items: lighting, paving, open space, landscaping, pedestrian connections, transit stop, roadway dedications and extensions, and any other obligations required under the Preliminary Development Plan. The declaration shall be finalized in the form approved by the Mayor and Council with all relevant conditions of approval incorporated therein. The finalized declaration shall be executed by all property owners, with a copy forwarded to the Mayor and Council, and recorded among the land records of Montgomery County prior to the issuance of the first Use Permit for development within the Preliminary Development Plan area;
- (3) A circulation plan indicating the public pedestrian ways linking all elements of the development with neighboring properties and any planned or programmed transit way station; and
- (4) A Natural Resources Inventory/Forest Stand Delineation as required by the City's Environmental Guidelines.

(d) Procedures following filing of Preliminary Development Plan application.

The procedures governing the filing of a Preliminary Development Plan shall be controlled by section 25-121 (posting of signs); 25-122 (written notice); 25-123 (establishment of hearing date); and 25-124 (referral of application to Planning Commission); and a public worksession with the Mayor and Council, Planning Commission, and the applicant will be held on the preliminary development plan prior to, or shortly following submission of an application.

(e) Action of Mayor and Council on Preliminary Development Plan.

Following the hearing, the Mayor and Council may, by resolution, approve, deny or approve with conditions the application under this division. No approval or conditional approval shall be given unless the Mayor and Council shall make the findings required in section 25-670 hereof. The Mayor and Council in connection with its approval of a Preliminary Development Plan may, if deemed appropriate, impose a phasing schedule, in order to ensure that the development proceeds in a comprehensive manner and that the benefits, amenities, and obligations associated with the Preliminary Development Plan, including, but not limited to the lighting, paving, landscaping, screening, green space, pedestrian access, transit stops and road extensions and dedications are provided commensurate with the development; provided, however, that the phasing schedule shall in no way dictate the time period within which an office building, commercial building or dwelling unit on a particular property shall develop or redevelop. The Mayor and Council shall have the authority to impose as a condition of approval, that certain funds be placed in an escrow account to ensure the implementation of the phasing schedule.

(f) Required findings of Mayor and Council on Preliminary Development Plan Application.

A Preliminary Development Plan Application for development in accordance with the O-1 Optional Method of Development shall not be approved by the Mayor and Council unless the following findings are made:

- (1) That the proposed development will not affect adversely the health or safety of persons who will reside or work in the neighborhood of the proposed development; and
- (2) That the proposed development will not be detrimental to the public welfare or injurious to property or improvements located or to be located in or adjacent to the development; and
- (3) That the proposed development will not be inconsistent with the intent or purpose of this division or article; and
- (4) That the proposed development will not overburden existing public services, including water, sanitary sewer, public roads, schools, storm drainage and other public improvements; and
- (5) That the proposed development complies with the development standards and requirements set forth in this division; and
- (6) That the proposed development complies with any applicable development staging and adequate public facilities requirements; and
- (7) That the proposed development promotes the City's environmental objectives as set forth in the Environmental Guidelines.

The fact that an application complies with all of the specific requirements and purposes of this article shall not be deemed to create a presumption that the application shall be approved.

(g) *Conditions of approval.* In approving a use permit application for optional method development, the Planning Commission may impose such conditions in connection therewith as will, in its opinion, assure that the improvement and development will conform to the requirements of this section and the Plan.

2. Amend Article XII, "SPECIAL DEVELOPMENT PROCEDURES", DIVISION 8, as follows:

DIVISION 8. I-3 OPTIONAL METHOD OF DEVELOPMENT

* * *

Sec. 25-667. Preliminary Development Plan required; contents and application.

A Preliminary Development Plan application for the I-3 Optional Method of Development for the entire development area shall be submitted on forms which shall be approved by resolution of the Mayor and Council and shall be accompanied by such fee as is determined by resolution of the Mayor and Council. All information specified on such forms shall be supplied and the form shall be subscribed by the application and the applicant shall be bound by all information specified thereon. In addition to information required on the application form, all applications must contain the following:

- (1) A traffic impact study in conformance with the City's "Standard Traffic Methodology," or its successor or such other form of traffic analysis acceptable to the City which shall provide mitigation of traffic impacts acceptable to the Mayor and Council;
- (2) A draft declaration to be executed by all property owners which sets forth the rights, responsibilities, and duties of each property owner with respect to the amenities, open space, dedications and any other obligations required under the Preliminary Development Plan for multiple building projects. The draft declaration shall include a proposed phasing schedule which corresponds each stage of development with the implementation of the rights, responsibilities and duties set forth in the Preliminary Development Plan application. The draft phasing schedule shall include, to the extent relevant, information regarding the provision of the following items: lighting, paving, open space, landscaping, pedestrian connections, transit stop, roadway dedications and extensions, and any other obligations required under the Preliminary Development Plan. The declaration shall be finalized in the form approved by the Mayor and Council with all relevant conditions of approval incorporated therein. The finalized declaration shall be executed by all property owners, with a copy forwarded to the Mayor and Council, and recorded among the land records of Montgomery County prior to the issuance of the first Use Permit for development within the Preliminary Development Plan area;

- (3) A circulation plan indicating the public pedestrian ways linking all elements of the development with neighboring properties and any planned or programmed transit way station; and
- (4) A Natural Resources Inventory/Forest Stand Delineation as required by the City's Environmental Guidelines.

* * *

Sec. 25-668 Procedures following filing of Preliminary Development Plan Application.

The procedures governing the filing of a Preliminary Development Plan shall be controlled by section 25-121 (posting of signs); 25-122 (written notice); 25-123 (establishment of hearing date); and 25-124 (referral of application to Planning Commission); and a public worksession with the Mayor and Council, Planning Commission, and the applicant will be held on the preliminary development plan prior to, or shortly following submission of an application.

Sec. 25-669. Action of Mayor and Council on Preliminary Development Plan.

Following the hearing, the Mayor and Council may, by resolution, approve, deny or approve with conditions the application under this division [with conditions]. No approval or conditional approval shall be given unless the Mayor and Council shall make the findings required in section 25-670 hereof. The Mayor and Council in connection with its approval of a Preliminary Development Plan may, if deemed appropriate, impose a phasing schedule, in order to ensure that the development proceeds in a comprehensive manner and that the benefits, amenities, and obligations associated with the Preliminary Development Plan, including, but not limited to the lighting, paving, landscaping, screening, green space, pedestrian access, transit stops and road extensions and dedications are provided commensurate with the development; provided, however, that the phasing schedule shall in no way dictate the time period within which an office building, commercial building or dwelling unit on a particular property shall develop or redevelop. The Mayor and Council shall have the authority to impose as a condition of approval, that certain funds be placed in an escrow account to ensure the implementation of the phasing schedule.

Sec. 25-670. Required findings of Mayor and Council on Preliminary Development Plan Application.

No Preliminary Development Plan Application for development in accordance with the I-3 Optional Method of Development shall be approved by the Mayor and Council unless the following findings are made:

- (1) That the proposed development will not affect adversely the health or safety of persons who will reside or work in the neighborhood of the proposed development; and

- (2) That the proposed development will not be detrimental to the public welfare or injurious to property or improvements located or to be located in or adjacent to the development; and
- (3) That the proposed development will not be inconsistent with the intent or purpose of this division or article; and
- (4) That the proposed development will not overburden existing public services, including water, sanitary sewer, public roads, schools, storm drainage and other public improvements; and That the proposed development complies with
- (5) the development standards and requirements set forth in this division; and
- (6) That the proposed development complies with any applicable development stating and adequate public facilities requirements; and
- (7) That the proposed development promotes the City's environmental objectives as set forth in the Environmental Guidelines.

The fact that an application complies with all of the specific requirements and purposes of this article shall not be deemed to create a presumption that the application shall be approved.

2. Amend Article XIII, "TOWN CENTER PLANNING AREA", DIVISION 2, as follows:

DIVISION 2. APPROVAL PROCEDURES

* * *

Sec. 25-682. Optional method of development.

- (a) Use of the optional method of development is a voluntary option for large tracts of land in the TCM-1 and TCM-2 Zones where multiple buildings are planned to be developed over a long period of time. Submission of an application under the optional method commits the applicant to a greater degree of development control authority by the [Planning Commission] Mayor and Council. The [Planning Commission] Mayor and Council may grant additional building height and F.A.R. where a development complies with more extensive standards of urban design review and traffic impact review and mitigation. Any development that receives approval may exceed the normal building height and F.A.R. specified in Table III contained in section 25-311 of this chapter, provided that in no event shall the resulting building exceed the maximum height and F.A.R. allowed in the zone. Developments submitted for approval under the optional method of development shall be subject to the following additional modifications and requirements:
 - (1) A minimum area of two (2) acres shall be required for applications under the optional method;
 - (2) All applicants shall prepare and submit a traffic impact study in conformance with the "Standard Traffic Methodology," or its successor and shall provide mitigation of traffic impacts which exceed

the standards of the STM as may be acceptable to the [Planning Commission] Mayor and Council;

- (3) All developments shall be subject to an urban design review process;
- (4) Developments shall be so planned in relation to one another that no building shall cast a shadow on existing or approved residential structures between 10:00 a.m. and 2:00 p.m. on December 21. This requirement shall not apply to residential towers separated by a distance at least equal to the height of the tallest residential building in the proposed development and having a length less than ten (10) percent greater than width;
- (5) All developments shall contain a mix of uses, including at least residential, office, and commercial components. The [Planning Commission] Mayor and Council may authorize modification to this use requirements where the strict application would result in practical difficulty or unnecessary hardship upon the owners;
- (6) All developments shall provide a system of public pedestrian ways linking all elements of the development with neighboring properties and the W.M.A.T.A. Rockville Metro station;
- (7) Within the TCM-1 and TCM-2 zones, the [Planning Commission] Mayor and Council may authorize additional building height up to a maximum of two hundred thirty-five (235) feet and F.A.R. up to a maximum of six (6);
- (8) All developments that provide right-of-way or easements for public streets or pedestrian ways may include the area of such right-of-way or easements in the net development area for the purpose of calculating F.A.R.

(b) Procedures following filing of Preliminary Development Plan Application.

The procedures governing the filing of a Preliminary Development Plan shall be controlled by section 25-121 (posting of signs); 25-122 (written notice); 25-123 (establishment of hearing date); and 25-124 (referral of application to Planning Commission); and a public worksession with the Mayor and Council, Planning Commission, and the applicant will be held on the preliminary development plan prior to, or shortly following submission of an application.

Sec. 25-683. Optional method approval.

- (a) Preliminary development plan. All land developed in accordance with the optional method shall be included in a Preliminary Development Plan approved by the [Planning Commission] Mayor and Council. The Preliminary Development Plan shall remain in full force and effect for the duration of the subdivision or development of the land, but it may be amended from time to time with approval of the [Planning Commission] Mayor and Council. Once approved, and except as amended by the [Planning Commission] Mayor and Council, a

Preliminary Development Plan shall control the development of all of the property included in the Preliminary Development Plan. Successors in title to the applicant of a Preliminary Development Plan shall be bound in the same manner and to the same extent as the applicant once the Preliminary Development Plan is approved by the [Planning Commission] Mayor and Council. Approval of a Preliminary Development Plan also constitutes approval of a Preliminary Subdivision Plan in accordance with Article XV of this chapter.

- (b) The [Planning Commission] Mayor and Council may authorize optional method development only if it determines that the proposed development is in substantial accordance with the Plan, and with the intent and purpose of this article, and is compatible with adjacent existing and permitted uses and developments. In making such determination, the [Commission] Mayor and Council shall consider:
 - (1) Provisions made for traffic impact mitigation, open space, pedestrian circulation, and environmental amenities;
 - (2) The particular dimensions, grade and orientation of the site, and the location and height of existing and proposed development in the Town Center Planning Area;
 - (3) The finding and requirements necessary for the approval of a preliminary plan under Article XV of this chapter.
 - (c) All requests for optional method approval shall be accompanied by the material and information the [Planning Commission] Mayor and Council requires to make a decision and accompanied by such fee as is determined by resolution of the Council.
 - (d) The fact that an application complies with all of the specific requirements and purposes of the applicable zone or the article shall not be deemed to create a presumption that the development shall be approved.
3. Amend Article XIII, "TOWN CENTER PLANNING AREA", DIVISION 3, as follows:

DIVISION 3. USE AND DEVELOPMENT REQUIREMENTS

* * *

Sec. 25-693. Parking, loading and access requirements.

* * *

- (7) Within the Town Center Performance District the [Planning Commission or the] Mayor and Council [of Rockville for City owned land or land purchased by the applicant from the City] shall have the authority in the granting of a [use permit

or] Preliminary Development Plan to approve temporary parking lots for uses that are part of a staged development program. Such parking may be located on a separate lot from the use served. The Planning Commission shall have the authority, in granting a use permit, to approve temporary parking lots for uses that are part of a staged development program. The Planning Commission, or the Mayor and Council for development subject to an approved preliminary development plan or for City owned land or land purchased by the applicant from the City, may attach such conditions to the approval of a temporary parking lot as may be reasonable and necessary to assure that the use will be consistent with the purposes and intent of this article.

- (8) All development within the Town Center Performance District that provides public rights-of-way or easements for roads may include the area of such right-of-way or easement in their net lot area for the purpose of calculating F.A.R.

4. Amend Article XIV, "ROCKVILLE PIKE CORRIDOR AREA", DIVISION 2, as follows:

DIVISION 2. SPECIAL REQUIRMENTS RELATING TO USE AND
DEVELOPMENT

* * *

Sec. 25-710.27. Optional method of development.

Use of the optional method of development is a voluntary option for any parcel of land in the RPC Zone. Submission of a preliminary development plan and subsequent use permit application under the optional method commits the applicant to a greater degree of development control authority by the Mayor and Council and Planning Commission. The [Planning Commission] Mayor and Council may grant additional building height and F.A.R. where a development complies with more extensive standards of urban design review, traffic impact review and mitigation, and provision for desired land uses. Any development that receives approval may exceed the normal building height and F.A.R. specified in Table IV contained in section 25-311 of this chapter, provided that in no event shall the resulting building exceed the maximum height and F.A.R. allowed in the zone. Developments submitted for approval under the optional method of development shall be subject to the following additional modifications and requirements:

- (1) A minimum record lot of twenty thousand (20,000) square feet shall be required for applications under the optional method.
- (2) Developments shall be so planned in relation to one another that no building shall cast a shadow on existing or approved residential structures between 10:00 a.m. and 2:00 p.m. on December 21. This requirement shall not apply to residential towers separated by a distance at least equal

- to the height of the tallest residential building in the proposed development and having a length less than ten (10) percent greater than width;
- (3) Not less than seventy-five (75) percent of the gross leasable area of the ground floor of any building shall be devoted to retail sales and personal services and/or home and business services as specified in section 25-296, table of commercial, office and industrial uses. The Mayor and Council may authorize modification to this special use limitation where the strict application would result in peculiar and unusual practical difficulties, without substantial impairment of the intent and purpose of this article [on] or the Plan.
 - (4) Any development that generates more than [one hundred (100)] thirty (30) vehicle trips during any peak hour shall prepare and submit a traffic impact study in conformance with the "Standard Traffic Methodology" [contained in the Plan or as may be updated from time to time] or its successor, and shall provide mitigation of traffic impacts which exceed the standards of the "Standard Traffic Methodology" or its successor as may be acceptable to the [Planning Commission] Mayor and Council.
 - (5) All developments shall comply with the urban design review process for the Rockville Pike Corridor Area as contained in the Plan.
 - (6) Within the Metro Performance District, the [Planning Commission] Mayor and Council may authorize additional F.A.R. up to a maximum of 1.5 and/or additional building height up to a maximum of one hundred ten (110) feet for developments that provide residential uses in compliance with the density recommendations contained in the Plan for the parcel. Except as provided for in section 25-18, Height, only residential uses shall be permitted above seventy-five (75) feet.
 - (7) All developments in the Metro Performance District shall provide public easements or rights-of-way for public pedestrian ways and access ways including the Halpine Promenade as designated in the Plan, and shall construct such improvements in substantial accordance with the design guidelines contained in the Plan.
 - (8) All developments that abut Rockville Pike shall provide a landscaped berm, walkway, splash block treatment, and building landscaping along the Rockville Pike frontage in substantial accordance with the Rockville Pike Streetscape guidelines contained in the Plan.
 - (9) Within the Metro Performance District, the following parking space quantity requirements shall apply:
 - a. Office, general or professional: Not less than 2.3 nor more than 2.7 parking spaces for each one thousand (1,000) square feet of gross floor area, which area shall include cellars or basements designed and available for tenant use or occupancy, but shall not include area used for off-street parking or atrium space when designed in substantial accordance with the design[ed] guidelines contained in the Plan.
 - b. Retail sales, trade or merchandising, except furniture stores and restaurants, when included as an integral part of a mixed use building

or residential building: Not less than 2.3 nor more than 7.5 parking spaces for each one thousand (1,000) square feet of gross leasable area.

DIVISION 3. APPROVAL PROCEDURES

Sec. 25-710.30. Optional method approval.

- (a) Preliminary development plan. All land developed in accordance with the optional method shall be included in a Preliminary Development Plan approved by the Mayor and Council. The Preliminary Development Plan shall remain in full force and effect for the duration of the subdivision or development of the land, but it may be amended from time to time with approval of the Mayor and Council. Once approved, and except as amended by the Mayor and Council, a Preliminary Development Plan shall control the development of all of the property included in the Preliminary Development Plan. Successors in title to the applicant of a Preliminary Development Plan shall be bound in the same manner and to the same extent as the applicant once the Preliminary Development Plan is approved by the Mayor and Council. Approval of a Preliminary Development Plan also constitutes approval of a Preliminary Subdivision Plan in accordance with Article XV of this chapter.
- (b) The Mayor and Council may authorize optional method development only if it determines that the proposed development is in substantial accordance with the Plan, and with the intent and purpose of this article, and is compatible with adjacent existing and permitted uses and developments. In making such determination, the Mayor and Council shall consider:
 - a. Provisions made for traffic impact mitigation, open spaced, pedestrian circulation, and environmental amenities;
 - b. The particular dimensions, grade and orientation of the site, and the location and height of existing and proposed development in the Town Center Planning Area;
 - c. The finding and requirements necessary for the approval of a preliminary plan under Article XV of this chapter.
- (c) All requests for optional method approval shall be accompanied by the material and information the Mayor and Council requires to make a decision and accompanied by such fee as is determined by resolution of the Council.
- (d) The fact that an application complies with all of the specific requirements and purposes of the applicable zone or the article shall not be deemed to create a presumption that the development shall be approved.
- (e) The procedures governing the filing of a Preliminary Development Plan shall be controlled by section 25-121 (posting of signs); 25-122 (written notice); 25-123 (establishment of hearing date); and 25-124 (referral of application to Planning

Commission); and a public worksession with the Mayor and Council, Planning Commission, and the applicant will be held on the preliminary development plan prior to, or shortly following submission of an application.

Sec. 25-710.31. Use permit approval.

All developments in the Rockville Pike Corridor Area shall require approval of [the] a use permit application in accordance with sections 25-192 and 25-193, except that the following additional requirements shall apply in the Rockville Pike Corridor Area:

- (1) The Planning Commission shall approve a use permit application only if the Commission finds:
 - a. That the proposed development will be consistent with the Plan;
 - b. That the proposed development will be consistent with the approved preliminary development plan, if applicable;
 - c. That the proposed development will be consistent with the intent and purpose of this article; and
 - d. That the proposed development will not overburden existing public services, including water, sanitary sewer, public roads, schools, storm drainage and other public improvements.
- (2) All developments in the RPR zone and all optional method developments in the RPC zone shall comply with the urban design review process for the Rockville Pike Corridor Area as contained in the Plan.
- (3) In approving a use permit application, the Planning Commission may impose such conditions in connection therewith as will, in its opinion, assure that the improvement and development will conform to the requirements, including, but not limited to[,];
 - a. provisions for the protection of adjacent property[,];
 - b. access and design for off-street parking and loading[,]; and
 - c. provisions for community facilities.

[Sec. 25-710.32. Optional method approval.]

- (a) [The Planning Commission may authorize optional method development only if it determines that the proposed development is in substantial accordance with the Plan and with the intent and purpose of this article, and is compatible with adjacent existing and permitted uses and developments. In making such determination the Commission shall consider:

- (1) Provisions made for traffic impact mitigation, open space and other environmental amenities;
 - (2) The particular dimensions, grade and orientation of the site, and the location and height of existing and proposed development in the Rockville Pike Corridor Area; and
 - (3) The retention or replacement of existing convenience retail use on the property and provision of new retail or residential uses.
- (b) All requests for optional method approval shall be submitted for concurrent consideration with the use permit application and shall be accompanied by the material and information the Planning Commission requires to make a decision.
- (c) The fact that an application complies with all of the specific requirements and purposes of the applicable zone or the article shall not be deemed to create a presumption that the development shall be approved.]

Exhibit # 1Subject: TXT2004-00212

On behalf of the Rockville Chamber of Commerce, we offer the following comments for the Mayor and Council's consideration of proposed Text Amendment TXT2004-00212.

Public Hearing Date: 7/19/04

The Chamber is committed to helping businesses, large and small, stay in Rockville as well as to bring new businesses to the City – a goal shared by the, newly renamed, Rockville Economic Development, Inc. and the Mayor and Council. Rockville has been, and continues to be, a vibrant community for small businesses and is striving to attract larger employers.

However, the Chamber is concerned that the cumulative impact of the new legislation introduced by this Mayor and Council has created a sense that Rockville is not sympathetic to the needs of business. While many of the recent initiatives are intended to make Rockville more of a destination city, thus attracting businesses, such as Art in Private Development; the greater the number of such prerequisites to development eventually create a disincentive to new development, and, consequently, to the ability to lure new business to Rockville or keep existing businesses within the City limits. Every dollar spent to develop a project is in turn passed on to the tenant. Therefore, the more it costs to develop a building, the more the rents must increase until small and medium businesses are no longer able to economically locate within the City. This is a loss for the residents and business community alike. We do not believe this is the goal of the Mayor and Council; however, we see this as an unintended consequence of recent actions.

The principle behind the text amendment is sound and has the potential to add greater certainty to the optional method development process. Based on the comments made during the worksession, it appeared the Mayor and Council were asking for new standards to guide upcoming projects proceeding via the Optional Method, similar to the standards that exist in the Montgomery County Zoning Ordinance for optional method projects in the CBDs. However, the proposed text amendment transfers the authority for design approval to the Mayor and Council and restricts the Planning Commission to a ministerial position in approving conforming Use Permits, without articulating any new standards.

We do not believe this was what was intended, as the Mayor and Council specifically appoint the Planning Commission to make land use decisions for the City based on the requirements of the Zoning Ordinance. The new authority granted by this text amendment would bind the Mayor and Council in the minutiae of urban design issues at the expense of other more global issues affecting the City. We also have a unique situation with this Mayor and Council in that many have Planning Commission and land use backgrounds. Our next Mayor and Council may not. We have a Planning Commission to assure both residents and businesses that city planning will be conducted according to Master Plans and Zoning Ordinances and remain non-political by people who are experienced in land use issues.

If the Mayor and Council is committed to directing the policy of new Optional Method projects, then the Chamber urges the Mayor and Council to adopt specific standards within the Zoning Ordinance, while maintaining flexibility for the Planning Commission and developers to adjust the particular development to the site and in response to market forces, and allowing the Planning Commission to continue to approve such developments.

As proposed, this text amendment preserves the ambiguities that were discussed at the worksession as "not working." This creates a difficult situation for anyone preparing to redevelop a site, as well as for the body reviewing and approving such a project.

We, therefore, urge the Mayor and Council to revise the text amendment to propose standards for Optional Method Developments and continue to allow the Planning Commission to enforce those standards. The Chamber is always prepared to bring together its members and representatives of the City to discuss such an alternative.

Thank you for your consideration.